

Service Date: July 9, 1985

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of the Application) UTILITY DIVISION
by MONTANA POWER COMPANY for)
authority to establish increased) DOCKET NOS. 83.9.67
rates for electric service in the) & 84.11.71
State of Montana. Colstrip Unit)
No. 3 and related facilities.) INTERIM ORDER NO. 5051j

INTERIM ORDER

FINDINGS OF FACT

1. On June 17, 1985, Judge Mark P. Sullivan issued a decision reversing substantial portions of the Montana Public Service Commission's Order No. 5051c. (Cause No. 84-C-388, Second Judicial District r County of Silver Bow). The decision remanded Docket 83.9.67 back to the PSC "for a proper determination of the need for the Colstrip 3 generating station which is (in) full compliance with this Court decree."

2. The PSC received Notice of Entry of Judgement on June 24, 1985.

3. On June 28, 1985, the Montana Power Company filed with the PSC "Electric Rate Schedules and Supporting Work papers Pursuant to MCA 69-3-302." The Letter of Transmittal that accompanied this filing asserted that, pursuant to Judge Sullivan's decision and 69-3-302, MCA, MPC had the authority to increase rates immediately without PSC approval.

4. The Filing proposed to raise rates by \$13.6 million

annually, although the Company asserted that it was authorized to raise rates by \$83 million to \$96 million annually.

5. On July 3, 1985, the PSC voted to reject MPC's June 28, 1985, submission as filed. The PSC did vote, however, to accept the filing as an interim rate increase request, as authorized by 69-3-304, MCA. Under that statute, the PSC voted to grant an additional \$13.6 million annual increase, bringing the total interim increase for MPC's electric operations to \$35 million. Finally, the PSC voted to consolidate Docket No. 83.9.67 with 84.11.71.

Commission Analysis

6. The PSC does not agree with MPC that the Court's decision and 69-3-3-2, MCA, either separately or in combination, provide any legal basis for a rate increase absent PSC approval. By its own terms, the Court decision has placed that Docket before the PSC "for further proceedings." MPC's interpretation of 69-3-302, MCA, lacks any support whatsoever for the proposition that it is applicable to the situation created by the Court's decision. Although there are other reasons for rejecting MPC's novel approach, they need not be discussed at this time. The PSC accepts informal assurances by MPC representatives that the immediate rate increase proposal was submitted based on a misunderstanding of conversations between the Company and the Commission staff. However, should there be any doubt that MPC intends to pursue its interpretation at this time, the PSC will take whatever measures are necessary to defend its position that 69-3-302, MCA, is not applicable in the present situation.

7. The PSC does not have a factual basis to dispute at

this time MPC's right to request on an interim basis, approval of between \$83 million and \$96 million annually as a means to partially implement the District Court's order. If the method used by the PSC to determine the interim rate increase in Docket 84.11.71, were applied in light of the District Court decision, a rate increase of substantially more than \$35 million would result.

However, it must be noted that the Docket is, by the Court's decision, open, the PSC, therefore, is entitled and even obligated to examine all the evidence in that case that has not been disallowed by the court's decision, and intends to do so.

8. The increase granted by this order, except to the extent that it makes use of loads and resources data submitted in Docket 84.11.71, does not reflect the PSC's analysis of the evidence presented in that Docket. In addition, use of the updated loads and resources information is consistent with the PSC's interim increase policy and does not constitute approval of the data submitted for purposes of a final decision in Docket No. 84.11.71. The PSC is aware that evidence submitted in Docket No. 84.11.71 is substantially different than in the previous docket. The PSC will determine, following submission of briefs by all parties and a close analysis of the evidence, whether investment in the Colstrip 3 generating plant should be granted rate base treatment. By this order, the PSC is simply complying with what it interprets to be the spirit of the District Court's decision pending a final determination in Docket No. 84.11.71 and any additional proceedings that might be conducted in Docket No. 83.9.67.

CONCLUSIONS OF LAW

1. All Findings of Fact are hereby incorporated as Conclusions of Law.

2. Montana Power Company furnishes electric service to consumers in Montana and is a public utility under the regulatory jurisdiction of the Montana Public Service Commission. 69-3-101, MCA.

3. The Montana Public Service Commission properly exercises jurisdiction over Montana Power Company's rates and operations. 69-3-102, MCA and Title 69, Chapter 3, Part 3, MCA.

4. The District court Order in Cause No. 84-C-388, does not mandate an immediate rate increase, but does allow such an increase, at least on an interim basis.

5. Use of the methods adopted by the PSC in Docket No.5051c with adjustments mandated by the District Court decision results in a rate increase substantially in excess of the \$35 million in interim increases, which will result from a grant of \$13.6 million in this order.

6. Section 69-3-302, MCA, does not authorize MPC to put any rate increase into effect in these dockets absent PSC approval.

7. The District Court decision, when combined with the provisions of 69-3-302, MCA, does not authorize MPC to put any rate increase into effect in these dockets absent PSC approval.

8. Section 69-3-304, MCA, gives the PSC authority to

implement the interim rates authorized by this order.

9. Pursuant to 69-3-330 and 69-3-201, MCA, the rates approved by this order are just, reasonable and not unjustly discriminatory.

ORDER

THE MONTANA PUBLIC SERVICE COMMISSION HEREBY ORDERS:

1. The Montana Power Company's June 28, 1985, filing which purports to effect a rate increase without approval by the Commission is rejected as filed.
2. The Montana Power Company's June 28, 1985, filing shall be considered a request for an interim rate increase request.
3. The Montana Power Company is hereby authorized to increase on an interim basis its current electric rates by \$13.6 million per year.
4. The rate increase approved herein shall be distributed on a uniform percentage basis for all customer classes.
5. This order is effective for electric services rendered on and after July 3, 1985.

DONE AND DATED this 9th day of July, 1985, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

JOHN B. DRISCOLL, Commissioner

HOWARD L. ELLIS, Commissioner

TOM MONAHAN, Commissioner
(Specially concurring)

DANNY OBERG, Commissioner

ATTEST

Trenna Scoffield
Secretary
(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

EXPLANATION OF MY CONCURRENCE

Although I am philosophically opposed to the granting of any interim rate increase for reasons expressed in the last Mountain Bell interim rate order and the Montana Light and Power interim rate order by this Commission, I do concur with the interim rate order in this Montana Power Co. Docket.

The interim of 13.6 million dollars is granted as a direct result of Judge Sullivan's Order in this case and by granting it the Commission has saved Montana ratepayers a sum which could have reached 75 to 85 million dollars.

TOM MONAHAN